

Part 2703, Chapter 3: Offenses / Dispositions

Rule 3.1 General, Criminal Offenses, and Investigations

A. General

This rule specifies a procedure for the investigation and resolution of complaints and administrative actions concerning nursing home administrators, administrators-in-training (A.I.T.), and permit holders.

B. Criminal Offenses

It shall be an offense punishable as a misdemeanor for an individual to:

- (1) perform the duties of a nursing home administrator after July 1, 1970, without a valid license issued hereunder;
- (2) provide any false information, either written or oral, incident to either an application for a license hereunder or the renewal of a license hereunder, or a hearing held under the provisions of the *Mississippi Nursing Home Administrators Law of 1970*, as amended;
- (3) employ knowingly an unlicensed individual to perform the duties of a nursing home administrator.

C. Investigations

The Board is authorized to investigate or cause to be investigated either on the basis of complaints filed with it, or on its own initiative, instances of suspected violations of any of the provisions of the law pertaining to the licensing of nursing home administrators or the Rules and Regulations of the Board pertaining thereto, including, but not limited to:

- (1) providing false information to the Board incident to either an application for license, an application for a new certificate of registration, a hearing or otherwise;
- (2) maladministration, which includes by way of illustration, but is not limited to: (a) practicing fraud, deceit, or misrepresentation in the capacity of a nursing home administrator; (b) willful falsification, destruction or theft of property or records relative to the practice of nursing home administration; (c) committing acts of misconduct in the operation of a nursing home; (d) advertising in a fraudulent, misleading, or deceptive manner; (e) failure to exercise true regard for the safety, health and life of patients; (f) unauthorized disclosure of information relating to a patient or his records; and (g) paying, giving, causing to be paid or given, or offering to pay, or

giving to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing home patronage, or accepting such payment;

- (3) unethical conduct, which includes by way of illustration, but is not limited to: wrongfully transferring or surrendering possession, either temporarily or permanently, of a license or certificate of registration as a nursing home administrator to any other person;
- (4) incompetence, which includes by way of illustration, but is not limited to: habitual drunkenness, addiction to the use of narcotic drugs, unsound mental health, and being physically unable to perform any and all duties of the administrator to ensure the health and safety of all residents;
- (5) conviction of a felony; and
- (6) unprofessional conduct, which includes but is not limited to, doing any act which reflects unfavorably upon a licensee under the law or these Rules and Regulations.

Source: *Miss. Code Ann. Sections 73-17-7(2), 73-17-9(d) and (e) and 73-17-13 (Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.2 Complaint Procedures

All investigations will be conducted fairly and objectively, observing all rights of due process, confidentiality and an individual right of response and defense.

A. Receipt of a Complaint

A complaint may be submitted to the Board by a person, member of the Board, firm, organization, or entity on a complaint form. A complaint must be in writing and must be signed and certified as to its truthfulness by the person or entity offering the complaint. The Board also may file a complaint based on information in its possession.

B. Content of a Complaint

The complaint must contain at least: i) the name and address of the nursing home administrator, A.I.T., permit holder, or party against whom the complaint is lodged; ii) the date of each transaction or event which is the subject of the complaint; iii) a description of the alleged violation which prompted the complaint; iv) the name of any person or party who may be a witness to the complaint; and v) documentation in support of the complaint.

C. Anonymous Complaint

An anonymous complaint will not be accepted.

D. Notice of a Complaint

Upon receipt of the sworn complaint against a nursing home administrator licensee, A.I.T., or permittee:

- (1) The complaint will be referred by the Executive Director to the investigating Board member.
- (2) A copy of the complaint shall be sent to the last known address on file with the Board for the licensee or party named in the complaint along with a request for a written response to the complaint. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee, A.I.T., or permittee in question for his or her written comment, and he or she shall submit a written response to the Board within twenty (20) days of the date of such correspondence, or waive the right to do so. A complaint will be presumed to be received no later than three (3) calendar days after the date of mailing.

Requests for comment on complaints sent to licensees, A.I.T.s, or permittees shall be considered properly served when sent to their last known address. The licensee, A.I.T., or permittee is responsible for keeping the Board informed of his or her current address.

- (3) Upon receipt of the written response of the party who is the subject of the complaint, a copy of the response shall be sent to the complainant. The complainant shall have ten (10) calendar days from the date of receipt to submit a written reply with the Board to the response.

E. Exceptions to Disclosure

Notwithstanding any other provision in these rules, the party named in a complaint will not be required to receive notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the Complaint Committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation of the complaint.

Source: *Miss. Code Ann. Sections 73-17-7(2), 73-17-9(d) and (e) and 73-17-13(Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.3 Reviews & Investigations by Complaint Committee

A. Review of a Complaint

- (1) After the receipt of a complaint and the expiration of the period for the response, the Complaint Committee, described in Part 2703, Chapter 3, Rule 3.9, shall consider the complaint, responses, and complainant's reply to the responses and other relevant material available and make a recommendation to the Board. The Complaint Committee shall also determine whether there is enough evidence to warrant a formal investigation of the complaint.
- (2) The Complaint Committee shall determine if there is a reasonable basis to believe the licensee, A.I.T., or permittee engaged in conduct identified as grounds for disciplinary or adverse action under *Mississippi Nursing Home Administrators Law of 1970*, as amended, and the Rules and Regulations of the Board.
- (3) If the Complaint Committee determines there is not a reasonable basis to believe in misconduct, the Complaint Committee will recommend that the complaint be dismissed by the Board and thereafter notify the complainant and the licensee, A.I.T., or permittee of the outcome of the complaint.
- (4) If, the Complaint Committee determines that a complaint warrants formal investigation, then the Complaint Committee shall investigate the matter.

B. Investigation of a Complaint

- (1) After notice and an opportunity to be heard, the Board may impose any of the sanctions, singularly or in combination, authorized by the *Mississippi Nursing Home Administrators Law of 1970*, as amended, for any violation of the Law and/or any of the rules and regulations governing nursing home administrators.
- (2) Upon completion of a formal investigation, the Complaint Committee shall consider the facts regarding the complaint. The Committee shall review the investigative report, supporting documents, and make a recommendation to the Board.
- (3) When in the opinion of the Complaint Committee a complaint warrants the issuance of a formal complaint against the licensee, A.I.T., or permittee, then the Complaint Committee shall recommend such action to the Board in accordance with Part 2703, Chapter 3, Rule 3.4.

Source: *Miss. Code Ann. Sections 73-17-7(2), 73-17-9(d) and (e) and 73-17-13(Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.4 Disposition of Complaints

A. Settlement

The Board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.

B. Board Review

Upon review and consideration, the Board shall vote upon the proposed recommendation(s) of the Complaint Committee and either uphold, reverse, or modify the recommendation(s).

C. Board Action

The Board may take any action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to another licensing board or appropriate authority for further action.

D. Specific Board Sanctions

- (1) Revocation of the license.
- (2) Suspension of the license, for any period of time.
- (3) Refusal to issue a license.
- (4) Denial of an application for a license.
- (5) Written reprimand to the licensee.
- (6) Placement of a licensee on probationary status and/or take any other action as appropriate.

Source: *Miss. Code Ann. Sections 73-17-7(2), 73-17-9(d) and (e) and 73-17-13 (Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.5 Settlement by Informal Proceedings

A. Purpose

The Board or the Complaint Committee may enter into informal proceedings with the party who is the subject of the complaint for the purpose of resolving the matter appropriately.

B. Informal Conferences

To facilitate the disposition of a complaint, the Board or the Complaint Committee may provide an opportunity for a party to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. No prejudice shall be attached to the licensee, A.I.T., or permittee for failure to attend a conference pursuant to a request.

C. Consent Order

An agreed or consent order reached through the stipulation or settlement process shall be signed by the party who is the subject of the complaint and, if applicable, his or her legal representative and approved by the Board.

No proposed settlement, consent agreement, voluntary surrender of a license, or other proposal for the resolution of a pending complaint or disciplinary action shall be effective unless approved by the Board and executed by the Board and the licensee, permittee, or A.I.T. No Board member is presumed to be biased and shall not be excused from participating in the adjudication and deliberation of a case or action based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for resolution of a pending disciplinary or licensure action.

Source: *Miss. Code Ann. Sections 73-17-3, 73-17-7(2), and 73-17-13*(Rev. 2008); and *Miss. Code Ann. Section 73-17-15* (Supp. 2011).

Rule 3.6 Administrative Proceedings

A. Case Summary

A case summary, including the alleged violations of the *Mississippi Nursing Home Administrators Law of 1970*, as amended, and the Rules and Regulations of the Board will be presented to the Board by the Complaint Committee along with the recommendation(s) for the disposition of the complaint. Reasonable attempts will be made to not disclose the identity of the licensee and the complainant by the Complaint Committee until the matter comes before the Board for hearing or final resolution.

B. Reasonable Cause

The Board's review will include the case summary prepared by the Complaint Committee to determine if reasonable cause exists to issue a notice of contemplated action or notice of hearing and complaint.

C. Dismissal of a Complaint

If the Board determines that there is not reasonable cause for the issuance of a notice of contemplated action or notice of hearing and formal complaint, a certified letter from the Board will be sent within thirty (30) calendar days of the Board's decision to the complainant and to the party named in the complaint. The letter will set forth the Board's action and reason for its decision.

D. Notice and Service to Respondent

If the Board determines that there is sufficient evidence or cause to issue a complaint or notice of contemplated action, the formal notice and complaint shall be signed by the Executive Director and shall be served as required by Section 73-17-15 of the Mississippi Code of 1972, as amended, to the party named in the complaint (the "Respondent") at his or her last known address on file with the Board.

E. Presiding Hearing Official

All hearings shall be conducted by the Board or by a hearing officer designated by the Board.

- (1) If a hearing officer is designated to hear a case, the hearing officer shall have the authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures due process and an efficient and orderly hearing and resolution of the case.
- (2) If a hearing officer is not designated to preside over the case or if the hearing officer is unavailable or unable to proceed, the Board chair or other designee of the Board shall have the authority to decide pre-hearing or preliminary matters.

F. Filings

The original of any papers, pleadings or other documents shall be filed with the Board office. Each party must send copies to the hearing officer and attorneys or parties of record.

G. Continuances

No more than two (2) continuances of the hearing will be granted without the approval of the Board for good cause.

H. Recusal

Complaint Committee members who participate in the preparation of recommendations to the remaining Board members shall not participate further in

any actions initiated by the Board against the licensee or party who is the subject of the complaint.

Source: *Miss. Code Ann. Sections 73-17-7(2), 73-17-9(d) and (e) and 73-17-13(Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.7 Administrative Hearings

- A. Pursuant to the *Mississippi Nursing Home Administrators Law of 1970*, Title 73, Chapter 17 of the Mississippi Code of 1972, as amended, every licensee, permit holder or applicant shall be afforded notice and an opportunity to be heard before the Board when the Board has cause to believe that he or she has violated any of the laws, rules, or regulations of the Board.
- B. The Board's Executive Director's duties shall include:
 - (1) Issuing a notice of hearing and complaint or notice of contemplated action in the case.
 - (2) Executing notices, scheduling orders, and other routine procedural documents that facilitate the conduct of the administrative proceedings.
 - (3) Maintaining the official record of all papers and pleadings filed with the Board in any matter.
 - (4) Preparing, certifying, and filing with the appellate court the record of the case on appeal or review.
- C. The hearing officer or the Board designee shall issue appropriate orders to control the course of the proceedings.
- D. The hearing officer or the Board designee may order the filing of briefs or other documents in the proceedings.
- E. A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or the Board designee upon the filing of a timely motion for continuance.
- F. At the conclusion of the hearing, a final decision and order shall be entered by the Board. A Board member hearing officer, the Board chair, or designated Board member shall have the authority to sign the written decision of the Board.
- G. The Board's Executive Director shall serve the decision of the Board on the licensee, permit holder, A.I.T., or applicant.
- H. If a license or permit is restricted, suspended or revoked by the Board, the

licensee shall immediately surrender his or her license to the Board as directed by the Board or the Board designee.

- I. If the licensee's scope of practice is restricted or limited or otherwise conditioned, the license may reflect such restriction, limitation or condition.

Source: *Miss. Code Ann. Sections 73-17-7(2), 73-17-9(d) and (e) and 73-17-13 (Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.8 Unlicensed/Unauthorized Practice

If, in the opinion of the Board, an individual may be operating as a nursing home administrator, A.I.T., preceptor, or permittee without appropriate license/credentials, then the Board may take any one (1) or a combination of the following actions:

- A. Issue a letter ordering that person to cease and desist from operating as a nursing home administrator, A.I.T., preceptor, or permittee, as applicable;
- B. Forward information to the appropriate law enforcement entity with a request that appropriate action be taken pursuant to law; or
- C. Initiate action for injunctive relief to stop the unauthorized practice or action.

Source: *Miss. Code Ann. Sections 73-17-3, 73-17-7(2), and 73-17-13 (Rev. 2008); and Miss. Code Ann. Section 73-17-15 (Supp. 2011).*

Rule 3.9 Complaint Committee

- A. Purpose

The Complaint Committee is formed to investigate complaints and disciplinary matters before the Board. This Committee shall:

- (1) Be selected from members of the Board on a rotating basis alphabetically by last name;
- (2) Review a complaint or investigative report; and
- (3) Participate in informal proceedings to resolve a formal complaint.

- B. Composition

The Complaint Committee shall be composed of at least two (2) persons, including the Executive Director and the investigating Board member, who may be assisted by counsel to the Board.

C. Other Assistance

The Complaint Committee may retain the services of experts, consultants, investigators or other persons determined to be necessary to assist in the processing and investigation of the complaint.

Source: *Miss. Code Ann. Sections 73-17-7(2) and (4) and 73-17-9(e)* (Rev. 2008).

Rule 3.10 Appeals

Appeals shall be perfected in accordance with the applicable Statute.

Source: *Miss. Code Ann. Section 73-17-7(2)*(Rev. 2008); and *Miss. Code Ann. Sections 73-17-15(3) and (4)*(Supp. 2011).

Rule 3.11 Restoration and Reinstatement of Licenses

- A. A license may be restored after revocation by the Board upon submission of evidence satisfactory to the Board that the applicant for such restoration of license has met all requirements by the Board for being reinstated to active license.
- B. Upon such application for restoration of a license, the Board may grant the applicant a formal hearing.
- C. If a conviction be subsequently reversed on appeal and the accused acquitted or discharged, his or her license shall become active from the date of such acquittal or discharge.

Source: *Miss. Code Ann. Sections 73-17-7(2) and 73-17-9(a), (b) and (c)*(Rev.2008).